

Dismiss and Motions to Strike [doc. #40]. Judge Giblin recommended that the Court deny ASIC's Rule 12 motion to dismiss and motion to strike Defendant Colony's answer, counterclaim and cross-claim in part, and grant it in part. He also recommended that the Court deny ASIC's Rule 12 motion to strike defendant Michael Buckley d/b/a Buckley & Sons Plumbing's Answer and Counterclaim.

To date, no party has filed objections to the magistrate judge's proposed findings and recommendation. Accordingly, having reviewed the record and Judge Giblin's report, the Court agrees with the magistrate judge's findings and recommended disposition. The Court **ORDERS** that the *Report and Recommendation* [doc. #40] is **ADOPTED**. Judge Giblin's findings and conclusions of law are incorporated in support of this order.

The Court further **ORDERS** that ASIC's Rule 12 motion to dismiss and motion to strike Defendant Colony's answer, counterclaim and cross-claim [doc. #13] is **GRANTED in part, and DENIED in part**. The motion is denied on the Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction; denied on the Rule 12(b)(6) motion to dismiss Colony's breach of contract claim against ASIC; granted with regard to the Rule 12(b)(6) motion to dismiss Colony's statutory claim under the Texas Insurance Code, and denied with regard to the Rule 12(f) motion to strike. It is further **ORDERED** that ASIC's motion to strike defendant Michael Buckley d/b/a Buckley & Sons Plumbing's Answer and Counterclaim filed against ASIC [doc. #22] is **DENIED**.

So **ORDERED** and **SIGNED** this **28** day of **September, 2010**.



Ron Clark, United States District Judge